

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JAMES W. BROWN, on behalf of himself and all others similarly situated, on behalf of the general public, and as an "aggrieved employee" under the California Labor Code Private Attorneys General

(b) County of Residence of First Listed Plaintiff Unknown
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Eric A. Grover, SBN 136080
KELLER GROVER LLP
425 Second Street, Ste. 500
San Francisco, CA 94107
Tel: 415.543.1305 / Fax: 415.543.7861

DEFENDANTS

CLEARPOINT ADVANTAGE, LLC

County of Residence of First Listed Defendant Bucks County, Pennsylvania
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE OF LAND INVOLVED.

Attorneys (If Known)

Melinda Riechert, SBN 65504
MORGAN, LEWIS & BOCKIUS LLP
2 Palo Alto Sq., 3000 El Camino Real, Ste. 700
Palo Alto, CA 94306
Tel: 650.843.4001 / Fax: 650.843.4001

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Bankruptcy	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Bankruptcy	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 426 Bankruptcy	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 427 Bankruptcy	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 Bankruptcy	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 429 Bankruptcy	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 430 Bankruptcy	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 365 Personal Injury - Med. Malpractice	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 431 Bankruptcy	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 432 Bankruptcy	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 433 Bankruptcy	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 434 Bankruptcy	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 435 Bankruptcy	<input type="checkbox"/> 892 Economic Stabilization Act
	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 436 Bankruptcy	<input type="checkbox"/> 893 Environmental Matters
			<input type="checkbox"/> 437 Bankruptcy	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 438 Bankruptcy	<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 439 Bankruptcy	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 440 Bankruptcy	<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1453; 28 U.S.C. §1332

Brief description of cause:

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ TBD

☒ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE March 26, 2008 SIGNATURE OF ATTORNEY OF RECORD *Melinda Riechert*

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

NDC-JS44

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

COPY

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RECEIVED

MAR 26 2008

RECEIVED
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Attorneys for Defendant
ClearPoint Advantage, LLC, dba Advantage
Services Group

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES W. BROWN, on behalf of himself
and all others similarly situated, on behalf
of the general public, and as an "aggrieved
employee" under the California Labor
Code Private Attorneys General Act,

Plaintiff,

vs.

CLEARPOINT ADVANTAGE, LLC,
dba ADVANTAGE SERVICES GROUP
and DOES 1 through 10 inclusive,

Defendants.

Case No. 08-01640 MEJ

**DEFENDANT CLEARPOINT
ADVANTAGE, LLC'S NOTICE OF
REMOVAL TO THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendant ClearPoint Advantage, LLC, dba Advantage
Services Group (hereinafter "Defendant") files this Notice of Removal pursuant to 28 U.S.C.
Sections 1332, 1446 and 1453, and states that this Court has jurisdiction over the action pursuant
to the Class Action Fairness Act of 2005. In support of this removal, Defendant states as follows:

1. This lawsuit is a civil action within the meaning of the Acts of Congress relating to
the removal of causes. See 28 U.S.C. § 1453.

2. On January 30, 2008, Plaintiff James W. Brown ("Plaintiff") filed a Complaint against Defendant in the Superior Court of the State of California, County of Alameda, entitled *James W. Brown, on behalf of himself and all others similarly situated, on behalf of the general public, and as an "aggrieved employee" under the California Labor Code Private Attorneys General Act v. ClearPoint Advantage, LLC, dba Advantage Services Group and Does 1-10 inclusive*, Case No. RG08368638, seeking overtime pay, penalties, disgorgement, restitution and other relief based upon violations of the California Labor Code and California Business and Professions Code §17200. True and correct copies of Plaintiff's Summons and Complaint ("Complaint") are attached hereto as Exhibit A.

3. The Complaint was served upon Defendant's registered agent on February 26, 2008. A true and correct copy of the Proof of Service of Summons is attached hereto as Exhibit B.

4. On March 25, 2008, the Defendant filed an Answer to the Complaint in the Superior Court of California, County of Alameda, a true and correct copy of which is attached hereto as Exhibit C.

5. Because this Notice of Removal is filed within thirty (30) days from February 26, 2008, the date upon which service of the Complaint was effectuated, it is timely under 28 U.S.C. §§ 1446(b) and 1453. No previous Notice of Removal has been filed or made with this Court for the relief sought herein.

6. This action was therefore commenced after the effective date of the Class Action Fairness Act of 2005, Pub. L. No. 109-2 (enacted Feb. 18, 2005), *codified at* 28 U.S.C. §§ 1332(d), 1453, and 1711-1715 ("CAFA").

7. This lawsuit was brought by a putative representative on behalf of five proposed classes of individuals. Complaint, ¶¶ 5-9. As such, this matter is a class action as that term is defined pursuant to 28 U.S.C. §§ 1332(d)(1)(B) and 1453.¹

8. This action originally could have been filed in this Court under

¹ Defendant does not concede, and reserves the right to contest at the appropriate time, Plaintiff's allegations that this action can properly proceed as a class action.

28 U.S.C. § 1332(d) because this matter was brought as a class action, Plaintiff is a citizen of a State different from Defendant, and the amount in controversy exceeds, in the aggregate, \$5,000,000, exclusive of interest and costs. Removal is therefore proper pursuant to 28 U.S.C. §§ 1446 and 1453.

9. Complete diversity exists between the Plaintiff and the Defendant.

(a) Plaintiff at all pertinent times was and is a citizen of the State of California. Complaint, ¶ 4.

(b) Plaintiff seeks to represent five classes. Complaint, ¶¶ 11, 16, 21, 26 & 32. The classes consist of:

1. "Plaintiff seeks to represent a class of all persons who are or were employed by Defendant and one or more Doe Defendants in the State of California within the applicable limitations period preceding the filing of this Complaint and have received wages from Defendant and one or more of the Doe Defendants in the form of checks issued by an out of state bank with no in-state address for presentation and no provision for negotiating such paychecks in California at no cost, all in violation of Labor Code section 212." Complaint, ¶ 11.
2. "Plaintiff seeks to represent a class of all persons who are or were employed by Defendant and one or more Doe Defendants in the State of California within the four years preceding the filing of the Complaint and who were sent on temporary assignments to work at clients of Defendant and one or more Doe Defendants who operated on a 4/10 alternative work schedule and who were not paid an overtime premium for all hours worked over eight in a day during those weeks when the employee worked less than the full 4/10 work week." Complaint, ¶ 16.
3. "Plaintiff seeks to represent as 'Class III – the Labor Code Section 204b Class,' a sub-class of Class II members who are or were employed by Defendant and one or more Doe Defendants in the State of California within the one year preceding the filing of the Complaint and who failed to receive their wages in a timely manner as required by Labor Code §204b." Complaint, ¶ 21.
4. "Plaintiff seeks to represent a second sub-class of all Class II class members who are former employees and who are entitled to a Labor Code § 203 waiting time penalty." Complaint, ¶ 26.
5. "Plaintiff seeks to represent as 'Class V – the End of Assignment Waiting Time Penalties Class' a class of employees who were assigned to work for clients of Defendant and one or more of the Doe Defendants and who did not receive their final wages on the last day of their assignment and who had not stated a new assignment by time of the next regularly scheduled pay day and who are thereby entitled to Labor Code § 203 waiting time penalty." Complaint, ¶ 32.

(c) Defendant was at all pertinent times and is a Limited Liability Company organized and existing under the laws of the State of Delaware, with its principal place of business in Pennsylvania. Defendant is a wholly-owned subsidiary of ClearPoint Resources, Inc. ("CPR"), organized and existing under the laws of the State of Delaware, with its principal place of business in Pennsylvania. In turn, CPR is a wholly-owned subsidiary of ClearPoint Business Resources, Inc. ("CPBR"), also a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business in Pennsylvania. Thus, Defendant is a citizen of Delaware and Pennsylvania for the purposes of determining diversity. 28 U.S.C. § 1332 (c)(1).

(d) Defendant is not now, and was not at the time of the filing of the Complaint, a citizen of the State of California within the meaning of the Acts of Congress relating to the removal of causes. Based on the Complaint, therefore, Plaintiff is a citizen of a State different from that of the Defendant.

(e) The citizenship of fictitiously-named "Doe" defendants is to be disregarded for the purposes of removal. 28 U.S.C. § 1441(a); Newcombe v. Adolf Coors Co., 157 F.3d 686, 690-91 (9th Cir. 1998) (for removal purposes, the citizenship of defendants sued under fictitious names shall be disregarded).

9. Pursuant to CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. See 28 U.S.C. § 1332(d)(6).

10. The Complaint does not allege a specific dollar amount Plaintiff seeks to recover. Plaintiff's prayer for relief seeks damages for overtime pay, penalties, disgorgement, restitution and other relief for Plaintiff and each putative member of the purported five classes defined in the Complaint, including compensatory and consequential damages, interest on any sums awarded, attorneys' fees and costs. Complaint (Prayer for Relief) ¶¶ 1-30.

11. Among other things, Plaintiff alleges that Defendant paid him and all of its California employees "in the form of checks issued by an out-of-state bank with no in-state address for presentation and no provision for negotiating such paychecks in California at no cost,

1 in violation of Labor Code 212". Complaint, ¶¶ 5, 11.

2 12. As such, Plaintiff seeks penalties under Labor Code § 2699 for himself and all
3 similarly affected class members (named as "Class 1" in the Complaint). Under Labor Code
4 § 2699(f)(2), if "at the time of the alleged violation, the person employs one or more employees,
5 the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the
6 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
7 each subsequent violation."

8 13. Defendant issued weekly paychecks to its employees. The penalties sought by
9 Plaintiff under Labor Code § 2699 would exceed the \$5,000,000 amount in controversy required
10 by CAFA if Defendant issued at least 486 checks per week. The penalty for the initial violation
11 would be $\$100 \times 486 = \$48,600$. The penalty for subsequent violations for the remainder of the
12 year would be $\$200 \times 486 \times 51 \text{ weeks} = \$4,957,200$. In such a scenario, total penalties under
13 this statute for the initial and continuing violations for a year would equal approximately
14 \$5,005,800, exceeding the minimum \$5,000,000 amount in controversy required.² In 2007, the
15 year Plaintiff was employed with the Defendant, Defendant issued in excess of 486 paychecks to
16 its California employees in any one week.

17 14. Additionally, Plaintiff alleges that Defendant failed to pay him and the putative
18 class members all wages earned at the end of an assignment. Complaint ¶ 82.

19 15. Plaintiff claims that, pursuant to Labor Code §§ 201-203, if an employee's
20 assignment ends, the employee must be paid his unpaid wages immediately. Complaint, ¶¶ 32,
21 34, 77.

22 16. Pursuant to Labor Code § 203, the "waiting time" penalty for failure to pay a
23 discharged employee immediately upon termination is a continuation of wages from the day
24 wages were due up until the day they were paid, up to a maximum of 30 days.

25 17. Plaintiff alleges claims for "waiting time" penalties pursuant to California Labor
26

27 ² In addition, Plaintiff seeks "the disgorgement of profits and restitution for all check-cashing
28 fees and any other out-of-pocket costs incurred and/or losses caused by having to pay check-
cashing fees and/or having bank holds placed on accounts. . ." Complaint, ¶ 55.

1 Code § 203 on behalf of himself and each of the discharged putative class members. See, e.g.,
2 Complaint, ¶¶ 26, 32.

3 18. According to Plaintiff's personnel file, Plaintiff earned \$12.63/hour while
4 employed by the Defendant. Plaintiff was a full-time employee of the Defendant. Thus,
5 according to Plaintiff's theory of damages, his individual claim for waiting time penalties
6 amounts to $\$12.63/\text{hour} \times 8 \text{ hours/day} \times 30 \text{ days} = \$3,031.20$.

7 19. Plaintiff contends that his claim is typical of the claim of each putative class
8 member. Complaint, ¶¶ 29, 35.

9 20. Therefore, under Plaintiff's theory of the case, he seeks typical "waiting time"
10 penalties of approximately \$3,031.20 on behalf of each of the alleged potential class members.
11 The amount of aggregate "waiting time" penalties Plaintiff seeks would exceed the minimum
12 \$5,000,000 amount in controversy required if Defendant had over 1,650 California employees
13 whose employment it terminated at the end of their assignment without receiving their final
14 paycheck. [$\$3,031.20 \times 1,650 = \$5,001,480$]. Defendant had in excess of 1650 employees in
15 2007. However, Defendant is unable at this time to determine how many, if any, employees in
16 2007 did not receive their final paycheck on the date their assignment ended.

17 21. In addition to the potential penalties alleged and discussed above, Plaintiff also
18 seeks the payment of overtime wages for himself and each member of the putative class.
19 Complaint, ¶¶ 16, 18.

20 22. In addition, Plaintiff also seeks to recover attorneys' fees. Complaint ¶¶ 51, 57,
21 61, 69, 75, 93, 101 and 114.

22 23. Thus, although Defendant denies Plaintiff's allegations or that he or the classes
23 that he purports to represent are entitled to the relief for which he has prayed, based on Plaintiff's
24 allegations and prayer for relief, the amount in controversy exceeds the \$5,000,000 threshold set
25 forth under 28 U.S.C. § 1332(d)(2).

26 24. Moreover, the Senate Judiciary Committee's Report on the final version of CAFA
27 makes clear that any doubts regarding the maintenance of interstate class actions in state or
28 federal court should be resolved in favor of federal jurisdiction. See, e.g., S. REP. 109-14, at 42:

1 “[I]f a federal court is uncertain about whether ‘all matters in controversy’ in a purported class
2 action ‘do not in the aggregate exceed the sum or value of \$5,000,000,’ the court should err in
3 favor of exercising jurisdiction over class actions. Its provisions should be read broadly, with a
4 strong preference that interstate class actions should be heard in a federal court if properly
5 removed by any defendant.”

6 25. Venue is proper in this district, pursuant to 28 U.S.C. §1441(a), because it
7 embraces the county in which the removed action has been pending. Pursuant to 28 U.S.C. §
8 1453(b), this action may be removed without the consent of all defendants.

9 26. The prerequisites for removal under 28 U.S.C. §§ 1441 and 1453 have been met.

10 27. As required by 28 U.S.C. § 1446(d), Defendant will give notice of this removal to
11 Plaintiff through his attorneys of record.

12 28. As required by 28 U.S.C. § 1446(d), a copy of this notice will be filed with the
13 Superior Court of the State of California in and for the County of Alameda.

14 29. If any question arises as to the propriety of the removal of this action, Defendant
15 requests the opportunity to present a brief and oral argument in support of its position that this
16 case is removable.

17 NOW THEREFORE, Defendant respectfully requests that this action be removed from
18 the Superior Court of the State of California in and for the County of Alameda to the United
19 States District Court for the Northern District of California, and that all proceedings hereinafter in
20 this matter take place in the United States District Court for the Northern District of California
21

22 Dated: March 26, 2008

MORGAN, LEWIS & BOCKIUS LLP

23
24 By Melinda Riechert
25 Melinda S. Riechert
26 Attorneys for Defendant
27 ClearPoint Advantage, LLC, dba
28 Advantage Services Group

EXHIBIT A

FEB-22-2008(FRI) 15:53 One Legal

P. 003/043

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CLEARPOINT ADVANTAGE, LLC, dba ADVANTAGE SERVICES GROUP and DOES 1 through 10 inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JAMES W. BROWN, on behalf of himself and all others similarly situated, on behalf of the general public, and as an "aggrieved employee" under the California Labor Code Private Attorneys General Act

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tienes 30 DÍAS DE CALENDARIO después de que te entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda County Superior Court

1225 Fallon Street

Oakland, CA, 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Eric A. Grover, Esq., Keller Grover LLP, 425 Second Street, Suite 500, San Francisco, CA 94107

Tel (415) 543-1305; Fax (415) 543-7861

DATE:

JAN 30 2008

PAT S. SWEETEN

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SCALE)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

Clearpoint Advantage, LLC

3. ☒ on behalf of (specify):

under: ☐ CCP 418.10 (corporation)

☐ CCP 418.20 (defunct corporation)

☐ CCP 418.40 (association or partnership)

☒ other (specify):

Limited Liability Corporation

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

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Attorneys for Plaintiff
JAMES W. BROWN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

JAMES W. BROWN, on behalf of himself
and all others similarly situated, on behalf of
the general public, and as an "aggrieved
employee" under the California Labor Code
Private Attorneys General Act,

Plaintiff,

v.

CLEARPOINT ADVANTAGE, LLC, dba
ADVANTAGE SERVICES GROUP and
DOES 1 through 10 inclusive,

Defendants.

Case No.:

RG08368638

CLASS ACTION

**PLAINTIFF'S COMPLAINT FOR
OVERTIME PAY, PENALTIES,
DISGORGEMENT, RESTITUTION
AND OTHER RELIEF BASED
UPON VIOLATIONS OF:**

1. California Labor Code; and
2. California Business and Professions Code §§ 17200, *et seq.*

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT

CASE NO.:

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Comes now Plaintiff James W. Brown ("Plaintiff") on behalf of himself, all others similarly situated, the general public, and all aggrieved employees, and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiff's claims based on, among other statutes, California Business & Professions Code §§ 17200, *et seq.* and California Labor Code §§ 201-203, 204b, 212, 226, 510, 1194, and 2699. Plaintiff has complied with all requirements set forth in Labor Code § 2699.3 necessary to commence a civil action seeking Labor Code § 2699 penalties.

2. Venue is proper in this Court because California Code of Civil Procedure sections 395 and 395.5, and case law interpreting those sections, provide that if a foreign corporation fails to designate with the office of the California Secretary of State a principal place of business in California, it is subject to being sued in any county in the state that plaintiff desires. On information and belief, Defendant Clearpoint Advantage, LLC, dba Advantage Services Group ("Defendant" or "Clearpoint"), a Delaware limited liability corporation, has failed to designate a principal place of business with the office of the Secretary of State.

PARTIES AND BACKGROUND

3. Defendant Clearpoint Advantage, LLC, dba Advantage Services Group, is a Delaware limited liability corporation doing business at various locations throughout the State of California. Defendant supplies temporary workers to clients.

4. Plaintiff James W. Brown ("Plaintiff") is a California resident and former employee of Defendant and ALS, LLC, which Defendant's parent, Clearpoint Business Resources, Inc., acquired in February 2007. Plaintiff, and all others similarly situated, are or were employed by Defendant and/or one or more of the Doe Defendants in the State of California within the four years preceding the filing of this Complaint.

5. Plaintiff has received wages from Defendant and one or more of the Doe Defendants in the form of checks issued by an out-of-state bank with no in-state address

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1 for presentation and no provision for negotiating those paychecks in California at no cost,
2 in violation of Labor Code § 212. On information and belief, similar paychecks that
3 violate Labor Code § 212 have been issued by Defendant and one or more of the Doe
4 Defendants to its California employees over the preceding four years. These individuals
5 are members of "Class I -- the Labor Code Section 212 Class."

6 6. Plaintiff also seeks to represent a class of non-exempt employees
7 employed by Defendant and one or more of the Doe Defendants in the State of California
8 within the four years preceding the filing of the Complaint who were sent on temporary
9 assignments to work at clients who operated on a 4/10 alternative work schedule and who
10 were not paid an overtime premium for all hours worked over eight in a day during those
11 weeks when the employee worked less than the full 4/10 work week and thereby also did
12 not receive accurate itemized wage statements. These individuals are members of "Class
13 II -- the Hourly Unpaid Overtime Pay Class."

14 7. On those occasions when Defendant and one or more Doe Defendants
15 failed to pay the members of Class II the proper overtime premiums, Defendant and one
16 or more of the Doe Defendants failed to pay Plaintiff and the members of Class II in a
17 timely manner as required by Labor Code § 204b. These individuals, who are a sub-class
18 of Class II, are members of "Class III -- the Labor Code Section 204b Class."

19 8. Plaintiff also seeks to represent a sub-class of Class II class members who
20 are former employees of Defendant and one or more Doe Defendants who left their
21 employment in the three years preceding the filing of the Complaint and are entitled to a
22 Labor Code § 203 waiting time penalty. These individuals are members of "Class IV --
23 the 4/10 Waiting Time Penalties Class."

24 9. Plaintiff also seeks to represent a class of employees who were assigned to
25 work for clients of Defendant and one or more of the Doe Defendants and did not receive
26 their final wages on the last day of their assignment and who had not started a new
27 assignment by time of the next regularly scheduled pay day and who are thus entitled to
28

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1 Labor Code § 203 waiting time penalties. These individuals are members of "Class V –
2 the End of Assignment Waiting Time Penalties Class."

3 10. Plaintiff does not know the true names of Defendants Does 1 through 10,
4 inclusive and, therefore, sues them by those fictitious names.

5 CLASS ACTION ALLEGATIONS

6 CLASS I – THE LABOR CODE SECTION 212 CLASS

7 11. Plaintiff seeks to represent a class of all persons who are or were employed
8 by Defendant and one or more Doe Defendants in the State of California within the
9 applicable limitations period preceding the filing of this Complaint and have received
10 wages from Defendant and one or more of the Doe Defendants in the form of checks
11 issued by an out of state bank with no in-state address for presentation and no provision
12 for negotiating such paychecks in California at no cost, all in violation of Labor Code
13 section 212. In particular, at least some of the paychecks issued by Defendant and one or
14 more Doe Defendants have only a bank name and address located in Hartford,
15 Connecticut, and contain no California address where the checks may be cashed.

16 12. The class consists of at least 75 employees, and likely more, and therefore
17 is so numerous that the joinder of each member of the class is impracticable.

18 13. There is a well-defined community of interest in the questions of law and
19 fact affecting the members of the class whom Plaintiff seeks to represent. The class
20 members' claims against Defendant and one or more Doe Defendants involve questions
21 of common or general interest, in that their claims are based on the implementation and
22 utilization of a policy pursuant to which all members of the proposed class received
23 paychecks issued by Defendant and one or more Doe Defendants drawn on an out-of-state
24 bank with no in state address for presentation and no provision for negotiating such
25 paychecks in California at no cost, all in violation of Labor Code section 212. This issue
26 is such that proof of a statement of facts common to the members of the class will entitle
27 each member of the class to the relief requested in this Complaint.

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14. Plaintiff's claims are typical of the claims of the members of Class I and his interests are consistent with, and not antagonistic to, those of the other Class I members Plaintiff seeks to represent. Plaintiff will fairly and adequately represent the interests of the class members because Plaintiff is a member of the class and the claims of Plaintiff are typical of those of the class. Plaintiff has retained attorneys who are experienced in the prosecution of class actions, and Plaintiff intends to prosecute this action vigorously.

15. Plaintiff requests permission to amend the Complaint to include additional class representatives if Plaintiff is deemed not to be an adequate representative of the class.

CLASS II - THE HOURLY UNPAID OVERTIME PAY CLASS

16. Plaintiff seeks to represent a class of all persons who are or were employed by Defendant and one or more Doe Defendants in the State of California within the four years preceding the filing of the Complaint and who were sent on temporary assignments to work at clients of Defendant and one or more Doe Defendants who operated on a 4/10 alternative work schedule and who were not paid an overtime premium for all hours worked over eight in a day during those weeks when the employee worked less than the full 4/10 work week. As a result of the violation described in this paragraph, the members of Class II did not receive accurate, itemized wage statements.

17. The class consists of at least 75 employees, and likely more, and therefore is so numerous that the joinder of each member of the class is impracticable.

18. There is a well-defined community of interest in the questions of law and fact affecting the members of the class Plaintiff seeks to represent. The class members' claims against Defendant and one or more Doe Defendants involve questions of common or general interest, in that their claims are based on the implementation and utilization of a policy pursuant to which all members of the class were not paid an overtime premium for all hours worked over eight in a day during those weeks when the employee worked

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1 less than the full 4/10 work week and did not receive accurate itemized wage statements,
2 all in violation of the Labor Code and Business & Professions Code §§.17200, *et seq.*
3 This issue is such that proof of a statement of facts common to the members of the class
4 will entitle each member of the class to the relief requested in this Complaint.

5 19. Plaintiff's claims are typical of the claims of the members of Class II and
6 his interests are consistent with, and not antagonistic to, those of the other Class II
7 members Plaintiff seeks to represent. Plaintiff will fairly and adequately represent the
8 interests of the class members because Plaintiff is a member of the class and the claims of
9 Plaintiff are typical of those of the class. Plaintiff has retained attorneys who are
10 experienced in the prosecution of class actions, and Plaintiff intends to prosecute this
11 action vigorously.

12 20. Plaintiff requests permission to amend the Complaint to include additional
13 class representatives if Plaintiff is deemed not to be an adequate representative of the
14 class.

15 **CLASS III - THE LABOR CODE SECTION 204b CLASS**

16 21. Plaintiff seeks to represent as "Class III - the Labor Code Section 204b
17 Class," a sub-class of Class II members who are or were employed by Defendant and one
18 or more Doe Defendants in the State of California within the one year preceding the filing
19 of the Complaint and who failed to receive their wages in a timely manner as required by
20 Labor Code § 204b.

21 22. The class consists of at least 75 employees, and likely more, and therefore
22 is so numerous that the joinder of each member of the class is impracticable.

23 23. There is a well-defined community of interest in the questions of law and
24 fact affecting the members of the class Plaintiff seeks to represent. The class members'
25 claims against Defendant and one or more of the Doe Defendants involve questions of
26 common or general interest, in that their claims are based on the implementation and
27 utilization of a policy pursuant to which all members of the class failed to receive their
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1 wages in a timely manner as required by Labor Code § 204b. This issue is such that proof
2 of a statement of facts common to the members of the class will entitle each member of
3 the class to the relief requested in this Complaint.

4 24. Plaintiff's claims are typical of the claims of the members of Class III and
5 his interests are consistent with, and not antagonistic to, those of the other Class III
6 members Plaintiff seeks to represent. Plaintiff will fairly and adequately represent the
7 interests of the class members because Plaintiff is a member of the class and the claims of
8 Plaintiff are typical of those of the class. Plaintiff has retained attorneys who are
9 experienced in the prosecution of class actions, and Plaintiff intends to prosecute this
10 action vigorously.

11 25. Plaintiff requests permission to amend the Complaint to include additional
12 class representatives if Plaintiff is deemed not to be an adequate representative of the
13 class.

14 **CLASS IV -**
15 **THE 4/10 WAITING TIME PENALTIES CLASS**

16 26. Plaintiff seeks to represent a second sub-class of all Class II class members
17 who are former employees and who are entitled to a Labor Code § 203 waiting time
18 penalty.

19 27. The class consists of at least 75 employees, and likely more, and therefore
20 is so numerous that the joinder of each member of the class is impracticable.

21 28. There is a well-defined community of interest in the questions of law and
22 fact affecting the members of the class Plaintiff seeks to represent. The class members'
23 claims against Defendant and one or more of the Doe Defendants involve questions of
24 common or general interest, in that their claims are based on the implementation and
25 utilization of a policy pursuant to which all members of the class failed to receive their
26 wages in a timely manner as required by Labor Code §§ 201-203. This issue is such that
27
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1 proof of a statement of facts common to the members of the class will entitle each
2 member of the class to the relief requested in this Complaint.

3 29. Plaintiff's claims are typical of the claims of the members of Class IV and
4 his interests are consistent with, and not antagonistic to, those of the other Class IV
5 members Plaintiff seeks to represent. Each member of Class IV will be entitled to
6 waiting time penalties if liability is established in connection with the claims made by the
7 members of Class II.

8 30. Plaintiff will fairly and adequately protect the interests of the members of
9 Class IV. Plaintiff has retained attorneys who are experienced in the prosecution of class
10 actions, and Plaintiff intends to prosecute this action vigorously.

11 31. Plaintiff requests permission to amend the Complaint to include additional
12 class representatives if Plaintiff is deemed not to be an adequate representative of the
13 class.

14 **CLASS V -**
15 **THE END OF ASSIGNMENT WAITING TIME PENALTIES CLASS**

16 32. Plaintiff seeks to represent as "Class V - the End of Assignment Waiting
17 Time Penalties Class" a class of employees who were assigned to work for clients of
18 Defendant and one or more of the Doe Defendants and who did not receive their final
19 wages on the last day of their assignment and who had not started a new assignment by
20 time of the next regularly scheduled pay day and who are thereby entitled to a Labor Code
21 § 203 waiting time penalty.

22 33. The class consists of at least 75 employees, and likely more, and therefore
23 is so numerous that the joinder of each member of the class is impracticable.

24 34. There is a well-defined community of interest in the questions of law and
25 fact affecting the members of the class Plaintiff seeks to represent. The class members'
26 claims against Defendant and one or more of the Doe Defendants involve questions of
27 common or general interest, in that their claims are based on the implementation and
28

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1 utilization of a policy pursuant to which all members of the class failed to receive their
2 wages in a timely manner as required by Labor Code §§ 201-203. This issue is such that
3 proof of a statement of facts common to the members of the class will entitle each
4 member of the class to the relief requested in this Complaint.

5 35. Plaintiff's claims are typical of the claims of the members of Class V and
6 his interests are consistent with, and not antagonistic to, those of the other Class V
7 members Plaintiff seeks to represent. Each member of Class V will be entitled to waiting
8 time penalties if liability is established in connection with the common claims made by
9 the members of Class V.

10 36. Plaintiff will fairly and adequately protect the interests of the members of
11 Class IV. Plaintiff has retained attorneys who are experienced in the prosecution of class
12 actions, and Plaintiff intends to prosecute this action vigorously.

13 37. Plaintiff requests permission to amend the Complaint to include additional
14 class representatives if Plaintiff is deemed not to be an adequate representative of the
15 class.

16 **FIRST CAUSE OF ACTION**

17 **(Issuance of Out-of-State Paychecks in violation of California Labor Code § 212)**

18 38. Plaintiff repeats and realleges each and every paragraph above as though
19 fully set forth herein.

20 39. California Labor Code § 212 states:

21 (a) No person, or agent or officer thereof, shall issue in
22 payment of wages due, or to become due, or as an advance
23 on wages to be earned:

24 (1) Any order, check, draft, note,
25 memorandum, or other acknowledgment of indebtedness,
26 unless it is negotiable and payable in cash, on demand,
27 without discount, at some established place of business
28 in the state, the name and address of which must
appear on the instrument, and at the time of its issuance
and for a reasonable time thereafter, which must be at least
30 days, the maker or drawer has sufficient funds in, or
credit, arrangement, or understanding with the drawee for
his payment.

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(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

40. In other words, the California Labor Code requires all employers to provide notice on each paycheck of a place within the State of California where the paycheck may be cashed on demand at no charge and without any waiting period.

41. By issuing Plaintiff and the putative class members (as described above) paychecks from an out-of-state bank with no printed notice on the paycheck of an in-state location where the paycheck may be cashed on demand at no charge and without any waiting period, Defendant and/or one or more Doe Defendants have violated the provisions of Labor Code § 212.

42. Plaintiff therefore brings this action on behalf of himself and all current and former employees within the State of California who, within the applicable statutory period preceding the filing of this Complaint, and continuing forward from that date, have received one or more paychecks processed and/or issued by Defendant that did not comply with Labor Code § 212 (i.e., the same persons who are members of Class I).

43. Therefore, Plaintiff, for himself and for all such persons (i.e., the same persons who are included in the definition of Class I), seek all of the remedies available for violations of California Labor Code § 212.

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SECOND CAUSE OF ACTION

(Labor Code Private Attorneys General Act of 2004 - Labor Code § 212)

44. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

45. California Labor Code § 2699(f) allows an "aggrieved employee" to bring a civil action on his or her own behalf and on behalf of other current or former employees.

46. Plaintiff is an "aggrieved employee" as that term is defined in California Labor Code § 2699(c) because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

47. Plaintiff has met all of the requirements set forth in Labor Code § 2699.3 necessary to commence a civil action against Defendant for violations of Labor Code § 212.

48. By its actions as alleged herein, Defendant has paid California employees with paychecks that have failed to comply with the requirements of Labor Code § 212.

49. Plaintiff therefore brings this action on behalf of himself and all current and former employees within the State of California who, within the applicable statutory period preceding the filing of this Complaint, and continuing forward from that date, have received one or more paychecks processed and/or issued by Defendant that did not comply with Labor Code § 212 (i.e., the same persons who are members of Class D).

50. Therefore, Plaintiff, for himself and for all such persons (i.e., the same persons who are included in the definition of Class D), seeks the penalties provided by Labor Code § 2699(f) for violations of California Labor Code § 212.

51. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

11

PLAINTIFF'S COMPLAINT

CASE NO.:

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THIRD CAUSE OF ACTION

(California Business & Professions Code §§ 17200, *et seq.* – Labor Code § 212)

52. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

53. At all times relevant herein, Defendant and/or one or more Doe Defendants have violated the provisions of Labor Code § 212 quoted above.

54. The conduct of Defendant and one or more Doe Defendants described above in this Complaint constitutes an unfair and unlawful business practice in violation of the provisions of California Business & Professions Code §§ 17200, *et seq.*

55. Plaintiff, on his own behalf, on behalf all other similarly situated persons (*i.e.*, the members of the proposed Class D) and on behalf of the general public, seeks disgorgement of profits and restitution for all check-cashing fees and any other out-of-pocket costs incurred and/or losses caused by having to pay check-cashing fees and/or having bank holds placed on accounts because of Defendant's failure to comply with Labor Code § 212.

56. Plaintiff further seeks an injunction against Defendant to prevent all future violations of Labor Code § 212 and an order requiring Defendant to provide paychecks to its California employees that meet all of the requirements of Labor Code § 212.

57. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

(Failure to Pay All Amounts Owed for All Hours Worked – Labor Code § 1194)

58. Plaintiff repeats and re-alleges each and every paragraph above as though fully set forth herein.

59. At all times herein relevant, Labor Code § 1194 has required that employees receive minimum wages or overtime compensation, as applicable, for all time worked.

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60. During the relevant statute of limitations, Defendant and one or more Doe Defendants have had in effect a policy and/or practice that resulted in Plaintiff and the members of Class II not being paid the required overtime premium for all hours worked over eight in a day during those weeks when the employee worked less than the full 4/10 work week.

61. Plaintiff, on behalf of himself and the putative members of Class II, therefore demands all compensation owed for Defendant's failure to comply with Labor Code § 1194, interest thereon, and attorneys' fees and costs, all as provided for by Labor Code § 1194(a).

FIFTH CAUSE OF ACTION

(Labor Code Private Attorneys General Act of 2004 – Labor Code § 1194)

62. Plaintiff herein repeats and realleges each and every paragraph above as though fully set forth herein.

63. California Labor Code § 2699(f) allows an "aggrieved employee" to bring a civil action on his or her own behalf and on behalf of other current or former employees.

64. Plaintiff is an "aggrieved employee" as that term is defined in California Labor Code § 2699(c) because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

65. Plaintiff has met all of the requirements set forth in Labor Code § 2699.3 necessary to commence a civil action against Defendant for violations of Labor Code § 1194.

66. By its actions as alleged herein, Defendant has failed to fully compensate Plaintiff and the putative members of Class II for all of the hours worked over eight in a day during those weeks when the employee worked less than the full 4/10 work week.

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67. Plaintiff therefore brings this action on behalf of himself and all current and former employees within the State of California who, within the applicable statutory period preceding the filing of this Complaint, and continuing forward from that date, have not received the full premium wages to which they are entitled under Labor Code § 1194 (*i.e.*, the same persons who are members of Class II).

68. Therefore, Plaintiff, for himself and for all such persons (*i.e.*, the same persons who are included in the definition of Class II), seeks the penalties provided by Labor Code § 2699(f) for violations of California Labor Code § 1194.

69. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

SIXTH CAUSE OF ACTION

(California Business & Professions Code §§ 17200, *et seq.* –
Labor Code §§ 1194 and 510)

70. Plaintiff herein repeats and re-alleges each and every paragraph above as though fully set forth herein.

71. At all times relevant herein, Defendant and one or more Doe Defendants have violated the above cited provisions of Labor Code § 1194 as well as Labor Code § 510.

72. The conduct of Defendant and one or more Doe Defendants described above in this Complaint constitutes an unfair and unlawful business practice in violation of the provisions of California Business & Professions Code §§ 17200, *et seq.*

73. Plaintiff, on his own behalf and on behalf all other similarly situated persons (*i.e.*, the members of the proposed Class II), seeks restoration of amounts that should have been paid pursuant to Labor Code §§ 510 and 1194, disgorgement of profits and restitution caused by the failure of Defendant and one or more Doe Defendants to provide all compensation due and owing during the period commencing

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four years prior to the filing of this Complaint and up through the time when the violations stop, all in a sum according to proof.

74. Plaintiff further demands an injunction against Defendant enjoining it from all future violations of Labor Code §§ 510 and 1194.

75. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

(Failure to Pay Wages Upon Termination - Labor Code §§ 201-203)

76. Plaintiff repeats and re-alleges each and every paragraph above as though fully set forth herein.

77. At all times relevant, Labor Code §§ 201 - 203 required Defendant and one or more Doe Defendants to pay a terminated or discharged employee all wages owed at the time of termination or discharge. At the time that Plaintiff and the putative members of Class IV left their employment with Defendant and one or more Doe Defendants, they had unpaid wages due and owing to them.

78. Plaintiff is informed and believes, and on that basis alleges, that the failure to pay Plaintiff and the putative members of Class IV all wages due and owing to them at the time that their respective periods of employment with Defendant and one or more Doe Defendants ended was willful within the meaning of the statute.

79. The willful failure of Defendant and one or more Doe Defendants to pay Plaintiff and the putative members of Class IV all wages due and owing to them at the time that their respective periods of employment ended constitutes a violation of Labor Code §§ 201 - 203.

80. Therefore, Plaintiff, for himself and all members of Class IV, seeks the remedies provided for in Labor Code § 203.

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EIGHTH CAUSE OF ACTION

(Failure to Pay Wages Upon Termination – Labor Code §§ 201-203)

81. Plaintiff repeats and re-alleges each and every paragraph above as though fully set forth herein.

82. At all times relevant, Labor Code §§ 201 - 203 required Defendant and one or more Doe Defendants to pay a terminated or discharged employee all wages owed at the time of termination or discharge. Plaintiff and the putative members of Class V are individuals who completed assignments for Defendant and one or more Doe Defendants and did not receive their final wages on the last day of their assignment and who had not started a new assignment by time of the next regularly scheduled pay day.

83. Plaintiff is informed and believes, and on that basis alleges, that the failure to pay Plaintiff and the putative members of Class V all wages due and owing to them at the time that their respective assignments ended without the start of a new one by the time of the next regularly scheduled pay day was willful within the meaning of the statute.

84. The willful failure of Defendant and one or more Doe Defendants to pay Plaintiff and the putative members of Class V all wages due and owing to them at the time that their respective assignments ended without the start of a new one by the time of the next regularly scheduled pay day constitutes a violation of Labor Code §§ 201 - 203.

85. Therefore, Plaintiff, for himself and all members of Class V, seeks the remedies provided for in Labor Code § 203.

NINTH CAUSE OF ACTION

(Labor Code Private Attorneys General Act of 2004 – Labor Code §§ 201- 203)

86. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

87. California Labor Code § 2699(f) allows an "aggrieved employee" to bring a civil action on his or her own behalf and on behalf of other current or former employees.

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1 88. Plaintiff is an "aggrieved employee" as that term is defined in California
2 Labor Code § 2699(c) because he is a person who was employed by the alleged violator
3 and against whom one or more of the alleged violations was committed.

4 89. Plaintiff has met all of the requirements set forth in Labor Code § 2699.3
5 necessary to commence a civil action against Defendant for violations of Labor Code
6 §§ 201 - 203.

7 90. By its actions as alleged herein, Defendant has failed to comply with the
8 requirements of Labor Code §§ 201 - 203 as they relate to Plaintiff and the putative
9 members of Class IV.

10 91. Plaintiff therefore brings this action on behalf of himself and all former
11 employees within the State of California who, within the applicable statutory period
12 preceding the filing of this Complaint, have not received all legally-required wage
13 payments to which they are entitled pursuant to Labor Code §§ 201 - 203 (i.e., the same
14 persons who are members of Class IV).

15 92. Therefore, Plaintiff, for himself and for all such persons (i.e., the same
16 persons who are included in the definition of Class IV), seeks the penalties provided by
17 Labor Code § 2699(f) for violations of California Labor Code § 203.

18 93. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to
19 California Labor Code § 2699(g)(1).

20 **TENTH CAUSE OF ACTION**

21 (Labor Code Private Attorneys General Act of 2004 - Labor Code §§ 201- 203)

22 94. Plaintiff repeats and realleges each and every paragraph above as though
23 fully set forth herein.

24 95. California Labor Code § 2699(f) allows an "aggrieved employee" to bring
25 a civil action on his or her own behalf and on behalf of other current or former
26 employees.

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1 96. Plaintiff is an "aggrieved employee" as that term is defined in California
2 Labor Code § 2699(c) because he is a person who was employed by the alleged violator
3 and against whom one or more of the alleged violations was committed.

4 97. Plaintiff has met all of the requirements set forth in Labor Code § 2699.3
5 necessary to commence a civil action against Defendant for violations of Labor Code
6 §§ 201 - 203.

7 98. By its actions as alleged herein, Defendant has failed to comply with the
8 requirements of Labor Code §§ 201 - 203 as they relate to Plaintiff and the putative
9 members of Class V.

10 99. Plaintiff therefore brings this action on behalf of himself and all former
11 employees within the State of California who, within the applicable statutory period
12 preceding the filing of this Complaint, have not received all legally-required wage
13 payments to which they are entitled pursuant to Labor Code §§ 201 - 203 (i.e., the same
14 persons who are members of Class V).

15 100. Therefore, Plaintiff, for himself and for all such persons (i.e., the same
16 persons who are included in the definition of Class V), seeks the penalties provided by
17 Labor Code § 2699(f) for violations of California Labor Code § 203.

18 101. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to
19 California Labor Code § 2699(g)(1).

20 **ELEVENTH CAUSE OF ACTION**

21 (Failure to Provide Accurate Wage Statements - Labor Code § 226)

22 102. Plaintiff repeats and re-alleges each and every paragraph above as though
23 fully set forth herein.

24 103. At all times relevant herein, Labor Code § 226(a) has required that
25 employers provide employees with itemized wage statements showing, among other
26 things, the name and address of the legal entity that is the employer and gross wages
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28

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1 earned and total hours worked. Labor Code § 226(c) provides that if an employer
2 knowingly and intentionally fails to provide a wage statement with the required
3 information, the employee is entitled to recover the greater of all actual damages or \$50
4 for the initial violation and \$100 for each subsequent violation, up to a total of \$4,000,
5 plus costs and attorneys' fees.

6 104. Defendant and one or more Doc Defendants knowingly and intentionally
7 failed to provide Plaintiff and the putative members of Class II with timely and accurate
8 wage statements as required by Labor Code 226(a). As a result, Plaintiff and all
9 members of Class II are entitled to the maximum amount of damages, costs and
10 attorneys' fees allowed by Labor Code § 226(c) for the applicable limitations period
11 preceding the filing of this Complaint and continuing forward from that date.

12 **TWELFTH CAUSE OF ACTION**

13 (Labor Code Private Attorneys General Act of 2004 – Labor Code § 204b)

14 105. Plaintiff repeats and re-alleges each and every paragraph above as
15 though fully set forth herein.

16 106. At all times relevant herein, Labor Code § 204b has required that
17 employers provide employees paid on a weekly basis with all wages not more than
18 seven calendar days after the close of the payroll period.

19 107. Defendant failed to provide Plaintiff and the putative members of Class
20 III with timely wages as required by Labor Code § 204b.

21 108. California Labor Code § 2699(f) allows an "aggrieved employee" to
22 bring a civil action on his or her own behalf and on behalf of other current or former
23 employees.

24 109. Plaintiff is an "aggrieved employee" as that term is defined in
25 California Labor Code § 2699(c) because he is a person who was employed by the
26 alleged violator and against whom one or more of the alleged violations was
27 committed.

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110. Plaintiff has met all of the requirements set forth in Labor Code § 2699.3 necessary to commence a civil action against Defendant for violations of Labor Code § 204b.

111. By its actions as alleged herein, Defendant has failed to comply with the requirements of Labor Code § 204b as it relates to Plaintiff and the putative members of Class III.

112. Plaintiff therefore brings this action on behalf of himself and all current and former employees within the State of California who, within the applicable statutory period preceding the filing of this Complaint, and continuing forward from that date, did not received timely wages as required by Labor Code § 204b (i.e., the same persons who are members of Class III).

113. Therefore, Plaintiff, for himself and for all such persons (i.e., the same persons who are included in the definition of Class III), seeks the penalties provided by Labor Code § 2699(f) for violations of California Labor Code § 204b.

114. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as hereinafter set forth.

AS TO THE FIRST, SECOND AND THIRD CAUSES OF ACTION:

1. For the civil penalties specified in Labor Code § 2699(f) for Plaintiff and each aggrieved member of Class I for each violation of Labor Code § 212 during the course of the applicable statute of limitations prior to the filing of this Complaint and until the date of compliance with the law;

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2. For disgorgement of profits and restitution of all costs incurred and/or losses caused by having to pay check cashing fees and/or having bank holds placed on accounts because of the failure of Defendant and Does 1 and 2 to comply with Labor Code § 212 for the four-year period preceding the filing of the Complaint and continuing forward therefrom, up to and including the present;
 3. For an injunction against Defendant and Does 1 and 2 enjoining them from all future violations of Labor Code § 212 and requiring them to provide paychecks to their California employees that meet all of the requirements of Labor Code § 212;
 4. For all damages available for violations of Labor Code § 212;
 5. For all interest on any sums awarded as allowed by law;
 6. For all reasonable attorneys' fees provided for by any applicable statute, including Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5;
 7. For all costs of this suit allowed by law; and
 8. For any other and further relief that the court deems just and proper.

AS TO THE FOURTH, FIFTH, AND SIXTH CAUSES OF ACTION:

9. For compensatory damages in an amount according to proof at time of trial representing the amount of unpaid compensation owed to Plaintiff and members of Class II for the failure to pay all premium wages due and owing during the applicable limitations period preceding the filing of the Complaint, up to and including the present and until the date of compliance with the law;
10. For the civil penalties specified in Labor Code § 2699(f) for Plaintiff and each aggrieved employee (i.e., the same persons who are included in the definition of Class II) for each violation of Labor Code § 1194

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during the course of the applicable statute of limitations prior to the filing of this Complaint and until the date of compliance with the law;

11. For restoration of amounts that should have been paid pursuant to Labor Code §§ 510 and 1194, disgorgement of profits and restitution of all costs incurred and/or losses caused by the failure to pay all wages due and owing in violation of Business and Professions Code §§17200, *et seq.*

12. For all interest on any sums awarded as allowed by law;

13. For all reasonable attorneys' fees provided for by any applicable statute, including Labor Code §§ 1194(a) and 2699(g)(1) and Code of Civil Procedure § 1021.5; and

14. For all costs of this suit allowed by law.

AS TO THE SEVENTH AND NINTH CAUSES OF ACTION:

15. For consequential damages to Plaintiff and each member of Class IV according to proof as set forth in Labor Code § 201, *et seq.*;

16. For the civil penalties specified in Labor Code § 2699(f) for Plaintiff and each aggrieved employee (*i.e.*, the same persons who are included in the definition of Class IV) for each violation of Labor Code § 203 during the applicable statute of limitations prior to the filing of this Complaint and until the date of compliance with the law;

17. For reasonable attorneys' fees, expenses and costs as provided in Labor Code § 2699(g)(1);

18. For Labor Code § 203 waiting time penalties to Plaintiff and each member of Class IV; and

19. For all interest on any sums awarded as allowed by law.

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2 **AS TO THE EIGHTH AND TENTH CAUSES OF ACTION:**

- 3 20. For consequential damages to Plaintiff and each member of Class V
4 according to proof as set forth in Labor Code § 201, *et seq.*;
5 21. For the civil penalties specified in Labor Code § 2699(f) for Plaintiff
6 and each aggrieved employee (*i.e.*, the same persons who are included
7 in the definition of Class V) for each violation of Labor Code § 203
8 during the applicable statute of limitations prior to the filing of this
9 Complaint and until the date of compliance with the law;
10 22. For reasonable attorneys' fees, expenses and costs as provided in Labor
11 Code § 2699(g)(1);
12 23. For Labor Code § 203 waiting time penalties to Plaintiff and each
13 member of Class V; and
14 24. For all interest on any sums awarded as allowed by law.

15 **AS TO THE ELEVENTH CAUSE OF ACTION:**

- 16 25. For the statutory damages available to Plaintiff and the members of
17 Class II under Labor Code § 226(e) for the failure to provide accurate,
18 itemized wage statements during the three years preceding the filing of
19 the Complaint and up to and including the present;
20 26. For reasonable attorneys' fees and the cost of bringing the suit, pursuant
21 to Labor Code § 226(e) and Code Civ. Proc. Code § 1021.5; and
22 27. For all interest on any sums awarded as allowed by law.

23 **AS TO THE TWELFTH CAUSE OF ACTION:**

- 24 28. For the civil penalties specified in Labor Code § 2699(f) for Plaintiff
25 and each aggrieved employee (*i.e.*, the same persons who are included
26 in the definition of Class III) for each violation of Labor Code § 204b
27 during the applicable statute of limitations prior to the filing of this
28 Complaint and until the date of compliance with the law;

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CASE NO.:

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1 AS TO ALL CAUSES OF ACTION:

2 27. For any other and further relief that the court deems just and proper.

3 Dated: January 30, 2008

4 Respectfully submitted,

5 KEYLER GROVER LLP

6 By: EA Grover
7 Eric A. Grover

8 Attorneys for Plaintiff
9 James W. Brown

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PLAINTIFF'S COMPLAINT

CASE NO.:

FEB-22-2008(FRI) 15:57

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P.032/043

JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: January 30, 2008

KELLER GROVER LLP

By:



Eric A. Grover

Attorneys for Plaintiff
James W. Brown

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PLAINTIFF'S COMPLAINT

CASE NO.:

EXHIBIT B

POS-010

<small>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)</small> Eric A. Grover, 136080 Keller Grover LLP 425 2ND ST STE 500 SAN FRANCISCO, CA 94107-1420 TELEPHONE NO.: (415) 543-1305 <small>ATTORNEY FOR (Name):</small> Plaintiff		<small>FOR COURT USE ONLY</small> FILED BY FAX ALAMEDA COUNTY February 28, 2008 CLERK OF THE SUPERIOR COURT By Denise Dalton, Deputy CASE NUMBER: RG08368638	
<small>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</small> Superior Court of Alameda County 1225 Fallon St. #209 Oakland, CA 94612-4293			
<small>PLAINTIFF/PETITIONER:</small> James W. Brown <small>DEFENDANT/RESPONDENT:</small> Clearpoint Advantage, LLC, et al.		<small>CASE NUMBER:</small> RG08368638	
PROOF OF SERVICE OF SUMMONS		<small>Ret. No. or File No.:</small> Clearpoint	

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons, Complaint, Civil Case Cover Sheet, Notice of Hearing, Alameda Co. Superior Court ADR Information Packet

3. a. Party served: Clearpoint Advantage, LLP

b. Person Served: Paracorp Incorporated, Valeris McCoy - Person authorized to accept service of process

4. Address where the party was served: 2804 Gateway Oaks Dr. #200
Sacramento, CA 95833

5. I served the party

a. by personal service, I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 2/26/2008 (2) at (time): 11:45 AM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

c. on behalf of:

Clearpoint Advantage, LLP

under: Other: Limited Liability Corporation

7. Person who served papers

a. Name: Tyler Dimaria

b. Address: One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947
415-491-0606

c. Telephone number:

d. The fee for service was: \$ 30.00

e. I am:

- (3) registered California process server,
(i) Employee or independent contractor,
(ii) Registration No. 2006-06
(iii) County SACRAMENTO

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 2/27/2008

Tyler Dimaria

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

Form Adopted for Mandatory Use
Judicial Council of California POS-010
(Rev. Jan 1, 2007)

PROOF OF SERVICE OF SUMMONS

FF# 6657457

Code of Civil Procedure, § 417.10

BY FAX

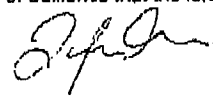


EXHIBIT C

1 MELINDA S. RIECHERT, State Bar No. 65504
2 LAUREN S. KIM, State Bar No. 210572
3 MORGAN, LEWIS & BOCKIUS LLP
4 2 Palo Alto Square
5 3000 El Camino Real, Suite 700
6 Palo Alto, CA 94306-2122
7 Tel: 650.843.4000
8 Fax: 650.843.4001

9 Attorneys for Defendant
10 ClearPoint Advantage, LLC,
11 dba Advantage Services Group

**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 25 2008

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 JAMES W. BROWN, on behalf of himself
15 and all others similarly situated, on behalf
16 of the general public, and as an "aggrieved
17 employee" under the California Labor
18 Code Private Attorneys General Act,

19 Plaintiff,

20 vs.

21 CLEARPOINT ADVANTAGE, LLC, dba
22 ADVANTAGE SERVICES GROUP and
23 DOES 1 through 10, inclusive,

24 Defendants.

Case No. RGO8368638

**DEFENDANT CLEARPOINT
ADVANTAGE LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

BY FAX

25 Defendant ClearPoint Advantage, LLC, dba Advantage Services Group ("Defendant"),
26 hereby answers and responds to Plaintiff James W. Brown's ("Plaintiff") unverified Complaint as
27 follows:

28 Pursuant to California Code of Civil Procedure §431.30(d), Defendant denies generally
and specifically each and every material allegation contained in Plaintiff's Complaint, and denies
further that Plaintiff has been injured in the amount or manner alleged or in any other manner
whatsoever.

1 WHEREFORE, Defendant asserts the following affirmative defenses and prays for
2 judgment as set forth below.

3 **FIRST AFFIRMATIVE DEFENSE**
4 **(Failure to State a Cause of Action)**

5 1. As a separate affirmative defense to the Complaint and to every cause of action
6 alleged therein, Defendant alleges that the Complaint fails to state facts sufficient to constitute a
7 cause of action against it.

8 **SECOND AFFIRMATIVE DEFENSE**
9 **(Statutes of Limitations)**

10 2. As a separate affirmative defense to the Complaint and to every cause of action
11 alleged therein, Defendant alleges that Plaintiff's claims, and the claims of each putative member
12 of the purported class action defined in the Complaint, or some of them, are barred in whole or in
13 part by the applicable statutes of limitations, including, but not limited to, the California Code of
14 Civil Procedure sections 338, 340, and California Business and Professions Code section 17208.

15 **THIRD AFFIRMATIVE DEFENSE**
16 **(Estoppel)**

17 3. As a separate affirmative defense to the Complaint and to every cause of action
18 alleged therein, Defendant alleges that Plaintiff's claims, and the claims of each putative member
19 of the purported class defined in the Complaint, or some of them, are barred in whole or in part by
20 the doctrine of estoppel.

21 **FOURTH AFFIRMATIVE DEFENSE**
22 **(Waiver)**

23 4. As a separate affirmative defense to the Complaint and to every cause of action
24 alleged therein, Defendant alleges that Plaintiff's claims, and the claims of each putative member
25 of the purported class defined in the Complaint, or some of them, are barred in whole or in part
26 because such claims have been waived, discharged and/or abandoned.
27

FIFTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction, Payment)

5. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendant alleges that Plaintiff's claims, and the claims of each putative member of the purported class action defined in the Complaint, or some of them, are barred in whole or in part by the principles of accord and satisfaction, and payment.

SIXTH AFFIRMATIVE DEFENSE
(Release)

6. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendant alleges that the claims of certain putative members of the purported class action defined in the Complaint are barred in whole or in part because said claims have been released by the individuals in question.

SEVENTH AFFIRMATIVE DEFENSE
(Laches)

7. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendant alleges that Plaintiff's claims, and the claims of each putative member of the purported class action defined in the Complaint, or some of them, are barred in whole or in part by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

8. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Plaintiff's claims, and the claims of each putative member of the purported class action defined in the Complaint, or some of them, are barred in whole or in part by their unclean hands and/or inequitable or wrongful conduct.

NINTH AFFIRMATIVE DEFENSE
(Conduct Reasonable and In Good Faith/Not Willful)

9. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendant alleges that if it is found to have failed to pay Plaintiff, and each

1 putative class member, any amount due, which allegations Defendant denies, Defendant acted at
 2 all times on the basis of a good faith and reasonable belief that it had complied fully with
 3 California wage and hour laws. Consequently, Defendant's conduct was not willful within the
 4 meaning of Section 203 of the California Labor Code.

5 **TENTH AFFIRMATIVE DEFENSE**
 6 **(Not the Employer)**

7 10. As a separate affirmative defense to the Complaint and to every cause of action
 8 alleged therein, Defendant alleges that Defendant was not at all times the employer of Plaintiff
 9 and the putative members of the class defined in the Complaint.

10 **ELEVENTH AFFIRMATIVE DEFENSE**
 11 **(Setoff and Recoupment)**

12 11. As a separate affirmative defense to the Complaint and to every cause of action
 13 alleged therein, Defendant alleges that if any damages have been sustained by Plaintiff, or by any
 14 putative class action members, although such is not admitted hereby or herein and is specifically
 15 denied, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all
 16 obligations of the Plaintiff or putative class action members owed to Defendant against any judgment
 17 that may be entered against Defendant.

18 **TWELFTH AFFIRMATIVE DEFENSE**
 19 **(Due Process/Class Certification)**

20 12. As a separate affirmative defense to the Complaint and to every cause of action
 21 alleged therein, Defendant alleges that certification of a class would constitute a denial of its due
 22 process rights in violation of the Fourteenth Amendment and the California Constitution.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**
 24 **(Not Appropriate for Class Action)**

25 13. As a separate affirmative defense to the Complaint and to every cause of action
 26 alleged therein, Defendant alleges that the types of claims alleged by the named Plaintiff on
 27 behalf of himself and the alleged class, the existence of which are expressly denied, are matters in
 28 which individual questions predominate and, accordingly, are not appropriate for class action

1 treatment.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**
3 **(Inadequate Representative)**

4 14. As a separate affirmative defense to the Complaint and to every cause of action
5 alleged therein, Defendant alleges that the Complaint fails to the extent it asserts a class action,
6 because neither Plaintiff nor Plaintiff's counsel will fairly and adequately represent the purported
7 class.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**
9 **(Claims Not Common or Typical)**

10 15. As a separate affirmative defense to the Complaint and to every cause of action
11 alleged therein, Defendant alleges that the Complaint fails to the extent it asserts a class action,
12 because the claims alleged by the named Plaintiff are neither common to nor typical of those of
13 the class he purports to represent.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**
15 **(Superiority)**

16 16. As a separate affirmative defense to the Complaint and to every cause of action
17 alleged therein, Defendant alleges that a class claim under California Business and Professions
18 Code Section 17200 is not maintainable for, among other reasons, failure to satisfy the
19 requirement of superiority.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**
21 **(Adequate Remedy At Law)**

22 17. As a separate affirmative defense to the Complaint and to every cause of action
23 alleged therein, Defendant alleges that Plaintiff's causes of action and those of the purported class
24 brought pursuant to California Business and Professions Code Section 17200, are barred in light
25 of the fact that Plaintiff and the purported class have an adequate remedy at law.
26
27

RESERVATION OF RIGHTS

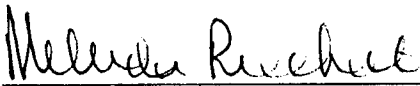
18. Defendant reserves the right to assert such additional affirmative defenses that may appear and prove applicable during the course of this litigation.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff and each putative member of the purported class action defined in the Complaint take nothing by the Complaint;
2. That judgment be entered against Plaintiff and against each putative member of the purported class action defined in the Complaint and in favor of Defendant;
3. That Defendant be awarded attorneys' fees incurred herein, including pursuant to Labor Code section 218.5;
4. That Defendant be awarded costs of suit herein; and
5. For such other and further relief as the Court deems just and proper.

Dated: March 25, 2008

MORGAN, LEWIS & BOCKIUS LLP

By 

Melinda S. Reichert
Attorneys for Defendant
ClearPoint Advantage, LLC
dba Advantage Services Group

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 2 Palo Alto Square, 3000 El Camino Real, Suite 700, Palo Alto, California 94306-2122. On March 25, 2008 I served the within document(s):

**DEFENDANT CLEARPOINT ADVANTAGE LLC'S
ANSWER TO PLAINTIFF'S COMPLAINT**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Federal Express and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

Eric A. Grover
Jade Butman
KELLER GROVER LLP
425 Second Street, Ste. 500
San Francisco, CA 94107
Tel: (415) 543-1305
Fax: (415) 543-7861
eagrover@kellergrover.com

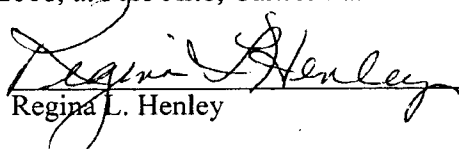
Attorney for Plaintiff
James W. Brown

Scot Bernstein
LAW OFFICES OF SCOT BERNSTEIN
10510 Superfortress Ave., Ste. C
Mather Field, CA 95655
Tel: (916) 447-0100
Fax: (916) 933-5533
swampadero@sbernsteinlaw.com

Co-Counsel for Plaintiff

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed on March 25, 2008, at Palo Alto, California.


Regina L. Henley